IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.8676 of 2004

Shri Balasaheb Nivruti Mali — Petitioner
Vs.
The Ganesh Bank of Kurundwad Ltd.
and ors. — Respondents

Mr.Suresh Pawar for petitioner.
Mr.G.S.Godbole for resp.no.1.
Mr.Dilip Boadake for resp.nos.3 & 5.

CORAM: B.H.MARLAPALLE & NARESH H.PATIL,JJ.

September 18, 2006.

P.C.

. Heard the learned counsel for the petitioner.

The Municipal House bearing C.S.No.2017/B, Omkar Apartment and more particularly Flat No.7, Rajarampuri, Fifth Lane at Kolahpur was claimed to be purchased by the present petitioner from one Pandurang Antu Pawar on or about 28/9/1998 and he claimed to be in possession of the said flat uninterruptedly.

. The previous owner - Shri Pandurang Pawar was a guarantor to the loan taken by one M/s.Yogesh Engineers Pvt. Ltd. from the respondent no.1 - Bank and the said flat was hypothecated by the first owner - guarantor. The loan became a bad debt and, therefore, the recovery proceedings were started and

by an order dated 11/11/2003 the Debts Recovery Tribunal passed an order attaching the said flat. The petitioner moved an application before the Recovery Officer for recalling the order dated 11/11/2003 and it was rejected on 23/6/2004 with a further direction to continue with the recovery proceedings from the stage they had reached. Being aggrieved by the said order passed by the Recovery Officer, DRT, Pune the petitioner filed Appeal No.54 of 2004 before the Debts Recovery Tribunal at Pune but without payment of the requisite fees and, therefore, the appeal came to be dismissed in default on 5/10/2004. Hence this petition.

. It is not disputed that the suit house was hypothecated by the previous owner i.e. Pandurang Pawar and it was for the petitioner to verify the clear title of the property before he purchased it. If the house was mortgaged by Mr.Pawar as the guarantor obviously the Bank had the first charge and, therefore, towards its recovery the attachment order was passed. The Bank was not knowing that the flat was subsequently sold to the petitioner. Under these circumstances, the attachment order at the instance of the petitioner could not be challenged

and he will have to at the most file proceedings for damages against the transferor and he will have no locus to file any application in the recovery proceedings initiated at the instance of the lender Bank. It is also pointed out by Mr.Godbole that the respondent no.1-Bank has merged with the Federal Bank Ltd.

. Hence the petition fails and the same is hereby rejected summarily.

(NARESH H. PATIL,J.) (B.H.MARLAPALLE,J.)